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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

MARVIN CLYDE MAGEE, JR.
Petitioner,

v.

UNITED STATES OF AMERICA
acting through the FARM SERVICE AGENCY
Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In Almighty GOD's most Holy and Wise Providence the petitioner a citizen of the sovereign State of Mississippi comes to this the highest court in our Republic seeking reconciliation for the redemption of his families lost constitutional property rights by government fiat by the perversion of justice. As Martin Luther so aptly stated and I concur *"Here I stand I can do no other."*

1. Whether the USDA appraisal is in conflict with Article I Sec. 8 of the constitution depriving a protected economic citizen of these United States of his property based on an unconstitutional fiat-inflated currency issued by the Federal Reserve Banking Corporation as the basis of the appraisal?

2. Whether the statutory and regulatory schemes implemented during the depression under 7 U.S.C. 601 & 7 U.S.C. 602 if not enforced place a burden on farmers constituting a taking of private property under the "Takings Clause" of the Fifth Amendment without just compensation?

3. Whether the Court of Appeals violated the petitioners "Due Process Clause" protection under the Fifth Amendment by the denial of the damage claim by the agency without administrative appeals being offered to the petitioner?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Marvin Clyde Magee, Jr. was the plaintiff in the district court and the appellant in the court of appeals.

Respondent United States of America acting through the Farm Service Agency of the United States Department of Agriculture was the defendant in the district court and the appellee in the court of appeals.

RULE 29.6 STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Marvin Clyde Magee, Jr. respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fifth District.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-4a) is unreported. The order of the court of appeals denying petitioner's petition for rehearing en banc (App. 5a-6a) is unreported. The opinion of the district court (App. 7a-21a) is unreported.

JURISDICTION

The judgement of the court of appeals was entered on July 20, 2009, and a timely petition for rehearing en banc was denied on September 21, 2009. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutes and constitutional provisions are reproduced in the appendix. The statutes involved are 7 U.S.C. 601 & 7 U.S.C. 602. The constitutional provisions involved are Article I Section 8 & the 5th amendment.

PRELIMINARY STATEMENT

The Fifth Circuit and the U.S. District Court of Southern Mississippi have abdicated their oath of office by allowing the existence of a quasi-federal central bank owned by private stockholders independent of the three branches of government and blatantly unconstitutional. Congress and congress alone has the sole power over monetary value. This power to plunder and loot the people was given to a private cartel of bankers in 1913 using paper money through deflation and inflation.

STATEMENT OF THE CASE

The Complaint

May 12, 1933 the United States in the midst of the Great Depression entered into a covenant with the states to regulate the prices paid to farmers in the marketplace, which elevated their economic status to that of being a public utility regulated in the interest of National Security. The State of Mississippi gave up its constitutional right and freedom to regulate agriculture within its borders. The petitioner purchased a 676 acre farm on his 23rd birthday May 12th 1976 and produced crops and livestock for market from then until February 2006 when notified by a USDA official to vacate the farm or face eviction by U.S. Marshals. The petitioner then filed to protect his constitutional rights in the U.S. District Court for Southern Mississippi. Judge Wingate failed to protect his

civil rights by failing to issue an injunction barring USDA from evicting the Magee family from their residence until litigation was terminated. The USDA decision-maker John T. Crout stated on tape during a National Appeals teleconference that as long as litigation was in process leaving the farm would not be required. The petitioner requested this case to be dismissed without prejudice since an injunction was not issued. A complaint was then filed in Smith County, Justice Court to protect the petitioners' property rights and the maximum judgement was granted. The complaint in question was then filed in state court and then removed by the U.S. Attorney to the U.S. District Court for the Southern District of Mississippi as case # (3:06-cv541-HTW-LRA).

The District Court's Decision

The District Court opinion was completely deferential to the agency and their appraisal of the property based on an inferior paper currency with no legal defined value. The prices Magee received for his commodity crops do not reflect this valuation. This decision came at the expense of the Magee's individual civil and property rights, which has resulted in bankruptcy being filed by them on October 16, 2009 as a direct result of the forced removal from the farm they spent working for 30 years (1976-2006).

The Court of Appeals Opinion

The Fifth Circuit in its opinion stated that *"The second claim is based upon various policies of the federal government, which he asserts depressed his income. Had it not been for these policies, he argues, would have made over two million dollars more than he actually did."* The court stated that these policies of government have no merit in this case. If that be true, then prisoners have no right to petition the court about their treatment by the Mississippi Department of Corrections or Federal prisons. Another example would be the Mississippi Public Service Commission not being accountable to the citizens for maintaining adequate power at an affordable price. The commission is required by law to allow the utilities to furnish energy to the consumer at a price that will be profitable for them to operate. USDA by law is responsible to maintain the markets farmers sell into regulated as to provide prices sufficient to generate a profit for farmers just like a public utility receives prices to cover their costs and make a profit. The 1933 law required USDA to regulate market prices received by farmers so as to offset the cost of production inputs. According to USDA's own records for the past 30 years farm prices on average have failed to reach 50% of the legal price published each month by USDA for farmers to remain profitable. Does the court system not provide checks and balances when the legislative or executive branches have failed to do their duty under law to protect the property rights of farmers? The crops and livestock owned by farmers are property and they must receive a fair price from the market. In the first

claim for review of the agency's appraisal, the Fifth Circuit and the District Court dodged the issue differing to the agency and their USPAP guidelines. This begs the question then which laws are more important or carry more weight than regulating the market so farmer's gross income reflects that of the other sectors of the economy, which figured prominently in the inflated USPAP appraisal for the property? Does this not amount to outright thievery by government fiat? An appraisal should have been based on the farm productive value of the property gauged by a physical equivalent currency of intrinsic value.

This is discrimination at the highest level. The Great Depression of the 1930's was directly attributed to the low farm prices received by the nation's farmers as a result of Federal Reserve action in 1920. We are once more gripped by another Depression caused once again primarily by 30 years of neglect by the federal government to keep the covenant made in 1933 with the states to maintain profitable prices for farmer's crops and livestock based on true physical value.

REASONS FOR GRANTING THE PETITION

James Madison gave as his reason for withholding his notes from the constitutional convention was that; *"its publication should be delayed till the Constitution should be well settled by practice."* These notes were published in 1840 over 50 years after the Constitution became the law of the land and 30 years before President U.S.

Grant added two more judges to the court, which overturned 80 years of settled law regarding paper money prohibited by the Constitution as understood by the founders. The Fifth Circuit turned its back on the protected individual and property rights of the petitioner in violation of the U.S. Constitution. In Hepburn v. Griswald Chief Justice Salmon P. Chase stated in the majority opinion that;

"There is in the constitution no express grant of legislative power to make any description of credit currency a legal tender in payment of debts." He went on further to say *"The making of notes of credit a legal tender in payment of preexisting debts is not a means appropriate, plainly adapted, or really calculated to carry into effect any express power vested in congress, is inconsistent with the spirit of the constitution, and is prohibited by the constitution."* The appraisal in question is defined in Federal Reserve promissory note dollars that are not constitutional money with a definitive value set by Congress. In *Hepburn* Chief Justice Chase said; *"At the time when the note was made, as also at the time when it fell due, there was confessedly no lawful money of the United States, or money which could lawfully be tendered in payment of private debts, but gold or silver coin."* Chase went on to say; *"Five days after the day when the note by its terms fell due-that is to say on the 25th of February, 1862- in an exigent crisis of the nation in which the government was engaged in putting down an armed rebellion of vast magnitude, congress passed an act authorizing the issue of $150,000,000.00.*

The compelling reason for this petition lies in the due process of the law. As the Chief Justice stated;

"The question is whether an act which compels all those who hold contracts for the payment of gold and silver money to accept in payment a currency of inferior value deprives such persons of property without due process of the law."

The $899,000.00 USDA appraisal could never pass constitutional muster in terms of physical intrinsic value. A government printing press creating unlimited promissory notes (bills of credit) is no substitute for physical labor, mining, manufacture, or agriculture production in terms of constitutional gold or silver.

I. A LEGAL DEFINITION OF THE STANDARD VALUE FOR WHAT CONSTITUTES A DOLLAR AS REQUIRED BY LAW NO LONGER EXISTS

There is no standard of conversion between the physical raw material economy and the financial obligation of the USDA appraisal when it is based on the value of Federal Reserve currency, which does not possess the constant value necessary for determining the amount of raw material production required to pay for the property. This appraisal is represented by false and fictitious money having no existence and represented only by credit and debit figures upon the books of banks. An imbalance has been created by this divergence of the physical and financial economies to the detriment of those producing raw materials in the physical economy.

Mr. Magee purchased the property in question for

$225,000.00 in 1976. The year before average prices received by farmers for corn, wheat, soybeans, and cattle according to USDA statistics were as follows; corn-$2.54/bu, wheat-$3.55/bu, soybeans-$4.92/bu, and cattle-$.32/lb.

In 2005 the year of the appraisal average prices received by farmers according to USDA statistics were as follows; corn-$2.00/bu, wheat-$3.42/bu, soybeans-$5.66/bu, and beef-$.89/lb.

The $899,000.00 appraisal is at odds with the productive capacity of the farms ability to pay the value based on Federal Reserve currency.

Measuring the farm value worth of the property between 1976 and 2005 there is a huge discrepancy in the actual physical raw material productive intrinsic value of the land, when measured by the loss in value of the Federal Reserve currency.

For corn adjusted for loss of value in the Federal Reserve currency a price of $8.71/bu. would be needed to equal the 1975 price in 2005.

For wheat adjusted for the loss of value in the Federal Reserve currency a price of $12.18/bu. would be required to equal the 1975 price in 2005.

For soybeans adjusted for the loss of value in the Federal Reserve currency a price of $16.88/bu. is required to equal the 1975 price in 2005.

For beef adjusted for the loss of value in the Federal Reserve currency $1.10/lb. is necessary to maintain the 1975 price in 2005.

As the court can plainly see the constitutional prohibition for not having depreciating paper money as currency is as clear today as it was in 1787 when it was prohibited by the founding fathers.

It would require the production of 449,500 bu. of corn at the 2005 price $2.00/bu to equal the value of the USDA appraisal. In 1976 it took only 88,582 bu. of corn priced at $2.54 to equal the value of the property at the time of its original purchase. If the property was based on corn production its value would only have been $177,164.00 in 2005.

It would be necessary to produce 262,865 bu. of wheat at the 2005 price $3.55/bu. to equal the value of the USDA appraisal. In 1976 it took only 63,380 bu. of wheat to equal the original purchase price of the property. If the property was based on wheat production its value would be $216,760.00 in 2005.

It would require the production of 158,833 bu. of soybeans at the 2005 price to equal the value of the USDA appraisal. At the time of purchase in 1976 only 45,731 bu. of soybeans were needed to be of the same value as the property. If the value was based on soybean production it would have to be $258,838.97 in 2005.

It would require the production of 1,002,229 lb. of beef at the 2005 price to match the value of the USDA $899,000.00 appraisal compared to the 1976 Federal Reserve currency value, which then needed only 698,757 lb. to equal the original purchase value of $225,000. In terms of beef production if it were used as the basis for the appraisal $626,785.45 would be the value. An overall average of these four farm commodities that were produced on this farm for the production value basis of the appraisal would equal $319,886.88 in 2005 instead of the agency appraisal based on a speculative bubble of paper assets on bankers balance sheets.

In real physical raw material productive value using USDA's own statistics, these figures clearly show that the property's farm value is considerably lower than when it was originally purchased in 1976 primarily because of an unconstitutional depreciating currency and an executive branch government agency that refuses to enforce laws to have a fair market for farmer's crops and livestock.

This court can stand up for the bankers or for the Magee family. In the book The Other End of the World author Professor Roger Rusk the brother of former Secretary of State Dean Rusk quotes Mr. David Rockefeller a few years ago from a dinner held in honor of Mr. Robert McNamara in Washington at his retirement as head of the World Bank, when he made the following statement:

"The world which we have worked to construct is threatened. The gravity of this moment, when Mr. McNamara and others are about to leave their posts while a new administration re-examines American foreign aid policy, is great. If we are going to save the international institutions we have put in place, the moment is now or never, for the struggle between the old guard and the new is going to go far beyond the reduction of capital appropriations. It is going to endanger the The New World Order w*hich we have based on the alliance between* Wall Street and Washington. *While we men of firms and banks organize international channels of economy and* Raw Materials, *the government is now building its own diplomatic and economic bridges between Washington and foreign governments. By our methods, our governments*

contribute to the stability and economic growth of the world, our multinationals benefit, and when it is necessary, they contribute their political support. NOW RADICAL CONSERVATIVES ARE ATTEMPTING TO DESTROY ALL THAT IN SEEKING FIRST AND FOREMOST TO SERVE THE NATIONAL INTERESTS OF THE UNITED STATES."

This is evidence that a conspiracy exists to defraud the people of the United States by the bankers and to vilify and try to silence those who would stand in their way, especially conservative Christians that subscribe to the laws of GOD, which this nation was founded upon.

II. THE STANDARD ADOPTED BY THE COURT OF APPEALS CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND OTHER CIRCUITS

In *U.S. v. James Daniel Good Real Property et al* (92-1180), 510 U.S. 43 (1993) held that "Absent exigent circumstances; the Due Process Clause requires the government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture."

In *U.S. v. Mitchell* 463 U.S. 206 (1983) the Supreme Court held that; the U.S. is accountable in damages for alleged breaches of trust in connection with its management of forest resources on allotted lands of the Quinault Reservation.

In *Lewis v. United States,* 680 F.2d 1239 (1982) the plaintiff sued the Federal Reserve for damages.

The United States moved to dismiss for lack of subject matter jurisdiction. Circuit Judge Poole affirmed the district court ruling that Federal Reserve Banks are not federal agencies.

The 9th Circuit in *McBride Cotton and Cattle v. Veneman* 290 F.3d 973 9th Cir. 2002 ruled NAD lacks authority to hear arguments that a USDA policy is improper, unlawful or unconstitutional.

In *Sugar Cane Growers Co-op of Florida v. Veneman* 289 F.3d 89 D.C. Cir. 2002 USDA failed to Comply with APA procedure. This was not harmless damage it was caused by increasing the supply of sugar thereby depressing the value. This precedent applies to USDA as well as the Federal Reserve increasing the supply of Federal Reserve promissory notes in circulation causing the existing notes in circulation to be lower in value and the loss of purchasing power by American farmers. USDA is charged to maintain parity in the marketplace like the way the NFL has preserved parity among its teams by allowing the teams with the worst records to get the first picks in the draft selecting the best players and maintaining salary caps to keep the teams with the larger markets from dominating the league. The same is required of USDA to keep the farm marketplace from being dominated by large capital corporations from control of the farm market and deprive farmers of the price needed for their crops and livestock. Corporations must be held accountable by USDA and not be able to depress prices with their market power to the detriment of the nation's farmers.

In *Appley Bros. v. United States* 164 F.3d 1164 8th Cir. 1999 the 8th circuit ruled that the Appley brothers claim was based on the USDA breach of a mandatory duty. The Appley brothers sued USDA to recover losses suffered on account of USDA negligence. The court awarded the farmers $517,000.00 in damages. In MAGEE v. USA the private property of Mr. Magee has been confiscated through expropriation by USDA's breach of a fiduciary contract to maintain profitable prices in the marketplace as required by the law passed in 1933, when the states gave up the people's freedom to have a fair market over to the authority of the United States government for the expressed purpose of maintaining parity for farmers to keep the overall economy in balance.

III. APPLICATION OF THE CORRECT LEGAL STANDARD IS ESSENTIAL FOR THE PRESERVATION OF PROPERTY RIGHTS GUARANTEED BY THE CONSTITUTION

In *Marbury v. Madison* Justice Marshall stated that; *"The question, whether an act, repugnant to the constitution, can become the law of the land is a question deeply interesting to the United States."* In 1913 congress passed the Federal Reserve Act allowing control of Article 1 Section 8 legislative authority over the value of the people's money to be given to a private cartel of banking interests.

During his time in office President Jackson broke the power of the bankers in the demise of the 2nd National Bank allowing the government of the

United States to become debt-free within months. The war that split the country 25 years later would install the bankers once again through the National Banking Act in 1863 making it impossible for the nation to ever get out of debt without destroying the promissory money supply that was to become the forerunner of the Federal Reserve Note currency.

In his speech given on the U.S. House floor June 10, 1932 Congressman Louis McFadden stated:

"One of the greatest battles for the preservation of this Republic was fought out here in Jackson's time; when the second Bank of the United States, founded on the same false principles of those which are here exemplified in the Fed was hurled out of existence. After that in 1837, the Country was warned against the dangers that might ensue if the predatory interests after being cast out should come back in disguise and unite themselves to the executive and through him acquire control of the Government. That is what the predatory interests did when they came back in the livery of hypocrisy and under false pretenses obtained the passage of the Fed."

On December 17, 1913 a few days before the Federal Reserve Act came up for a vote Senator Henry Cabot Lodge of Massachusetts wrote a letter to Senator John W. Weeks as follows:

"Throughout my public life I have supported all measures designed to take the Government out of the banking business. This bill puts the Government in the banking business as never before in our history. The powers vested in the

Federal Reserve Board seem to me highly dangerous especially where there is political control of the board. I should be sorry to hold stock in a bank subject to such dominations. The bill as it stands seems to me to open the way to a vast inflation of the currency. I had hoped to support this bill, but I cannot vote for it cause it seems to me to contain features and to rest upon principles in the highest degree menacing to our prosperity, to stability in business, and to the general welfare of the United States."

IV. LEGAL PLUNDER WAS THE CAUSE OF THE TAX WAR BETWEEN THE STATES RESULTING IN THE LOSS OF 80 YEARS OF SETTLED LAW

In 1861 the northern industrial business interests went to war with the southern agricultural states that left the union fleeing the taxes of the incoming Lincoln administration 50% tariff of which over 75% of this tax burden fell on the south. The armada sent to Charleston Harbor by Mr. Lincoln to provoke the south was in response to the Confederacy passing a revenue tariff to fund its government in the range of 10-15%. The northern business interests knew all commerce would leave the northern ports because of their high taxes on foreign imported goods and go to the low tax southern ports.

On March 26, 1861 the New York Times ran a story stating that; *"The first thing to be done without which all attempts to do anything else are futile and foolish is to prevent the seceded states*

from achieving their independence."

The Chancellor of Germany, Otto von Bismark observed; *"The division of the United States into federations of equal force was decided long before the Civil War by the high financial powers of Europe. These bankers were afraid that the United States. If they remained in one block and as one nation, would attain economic and financial domination over Europe and the world. Of course, in the inner circle of Finance, the voice of the Rothschilds prevailed. They saw an opportunity for prodigious booty if they could substitute two feeble democracies, burdened with debt to the financiers,...in place of a vigorous Republic."*

Salmon P. Chase Secretary of Treasury in the Lincoln administration stated that greenbacks were an *"indispensible necessity"* in the war on the southern states. Eight years later after the war and as the Chief Justice of the U.S. Supreme Court he declared them unconstitutional.

In 1820 John Taylor of Caroline prophetically wrote in the Constitution Construed on page 298;

"The great pecuniary favor granted by congress to certificate-holders; begat banking: banking begat bounties to manufacturing capitalists; bounties to manufacturing capitalists begat an oppressive pension list; these partialities united to beget the Missouri project; that project begat the idea of using slavery as an instrument for effecting a balance of power; when it is put in operation, it will beget new usurpations of internal power over persons and property, and these will beget a dissolution of the union."

Mr. Taylor foresaw the trouble ahead for the Republic. A proper respect for property would have overcome the dissolution of the union in 1861, because of the north over-taxing the wealth of the south. The war resulted in the whole country being enslaved to the bankers.

In the year 2009 the nation finds itself at a crossroads in regard to the right of property once again with government and business interests in collusion with the Federal Reserve plundering the people's wealth with unconstitutional bills of credit borrowed into circulation. MAGEE v. USA represents a microcosm of the nation and the effect this collusion is having on the physical wealth of the people in every state of the union.

V. THE CONSTITUTIONAL VISION OF LIMITED GOVERNMENT DICTATED BY THE FOUNDERS NO LONGER EXISTS

This is directly attributed to the subjugation of the south and their fight for freedom in defense of the constitution. The well known novelist Charles Dickens published a lengthy editorial in which he blamed the war for southern independence on the Morrill Tariff. This editorial stated; *"The quarrel between the north and the south is, as it stands, solely a fiscal quarrel."* Once the south seceded from the Union there was no longer any opposition in congress to high protectionist tariffs and the Morrill tariff passed March 2, 1861. Mr. Lincoln stated in his first inaugural speech;

" The power confided in me, to hold, occupy, and

possess the property, and places belonging to the government, and collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion-no using force against, or among the people anywhere."

Collect the tariff from the south and no invasion, fail to collect and there would be one according to Mr. Lincoln.

On February 7, 1870 in reaction to the *Hepburn* opinion handed down by the court President Grant blatantly added two new justices to the Supreme Court for the sole purpose of overturning *Hepburn*, which they did making paper money legal tender in violation of Article 1 Section 8 of the constitution. Did the constitution change or did men's depravity or inclination toward evil deprive the people of the protections guaranteed by this document? This is the purpose for checks and balances to counter the evil hearts and minds of those holding authority in our United States government

In the CONGRESSIONAL RECORD-SENATE February 23, 1923 on page 4361 Sen. Ladd stated:

"Silver was demonetized by an act of Congress that for treachery, perfidy, and deception has no precedent nor a parallel in the annals of representative government. President Grant, who signed the bill, said that he did not know that the act of 1873 demonetized silver." Sen. Morgan of New York stated that: *"It can not even be fairly said that Congress did it. It was done at the instigation of the bondholders and other money kings, who now, with upturned eyes deplore the wickedness we exhibit in asking the question even.*

Who did this great wrong against the toiling millions of our people?"

Sen. Beck of Kentucky added that: *"The bill demonetizing silver never was understood by either House of Congress."* This made the national debt of the United States payable in gold.

Sen. Ladd read the The Famous Hazzard Circular issued in the fall of 1862 by an American agent of British financiers and distributed to the nations wealthy it stated:

"Slavery is likely to be abolished by the war power and chattel slavery destroyed. This I and my European friends are in favor of for slavery is but the owning of labor and carries with it the care of the laborer, while the European plan, led on by England is capital's control of labor by controlling wages. This can be done by controlling the money. To accomplish this, the bonds must be used as a banking basis. We are now waiting to get the Secretary of the Treasury to make this recommendation to Congress."

As the gatekeeper of the Constitution it is past time for this court to repair the injustices at the hands of past evil office holder's neglect of conforming to the letter of the law as stated in our nations founding document. This generation of Americans must be allowed to overcome the lies and abuses of the past, replacing them with truth, honesty and justice.

VI. THIS PLUNDER OF FARM WEALTH REQUIRES THE COURTS IMMEDIATE ACTION FOR A REMEDY TO AVERT ANOTHER GREAT

DEPRESSION OF A LARGER MAGNITUDE

Since 1950 gross farm income in these United States has increased by about 200%, while all other sectors of the economy such as wages, government, industry, etc. have enjoyed increases of 2500-3000% during this time all at the expense of farmers. For every dollar crops and livestock or for that matter any raw material product is produced below the actual cost of production this is added to the national debt exponentially. In response to the Great Depression the Roosevelt administration declared a National Emergency and all the states of the union ceded their power to regulate farm markets to the federal government to regulate farm markets so that prices would be more than the cost of producing the crops or livestock. Low farm prices were a major contributing factor causing the Great Depression, brought on by this imbalance of prices.

VII. ALL THAT IS NECESSARY FOR NATIONAL RECOVERY IS FOR FARMERS TO RECEIVE THE LEGAL PRICE PUBLISHED BY USDA EACH MONTH FOR CROPS AND LIVESTOCK

This is a quote from Mr. Peteliax Webster a colonial leader in 1789 after the experience of the Continental dollar:

"Paper money polluted the equity of our Laws, turned them into engines of oppression, Corrupted the justice of our Public Administration, destroyed the fortunes of thousands who had confidence in it, enervated the Trade, Husbandry, and

Manufactures of our Country, and went far to destroy the Morality of our People."

VIII. A GOVERNMENT HAS NO JURISDICTION OVER ITS PEOPLE WHEN IT HAS LOST ITS MORAL AUTHORITY BY COMMITTING FRAUD AGAINST THE PEOPLE IT IS REQUIRED TO SERVE AND PROTECT.

In Federalist 51 James Madison stated that; *"But what is government itself but the greatest of all reflections on human nature? If men were angels no government would be necessary."* Madison was schooled in Calvinism, which taught that men are totally depraved as a result of the fall of Adam. Two thirds of the population, who took part in the American revolution were trained in the precepts of John Calvin and the Protestant Reformation started by Martin Luther. Madison patterned the structure of the U.S. government with its checks and balances after the Presbyterian form of government derived from the Bible. The House of Representatives represent the office of Deacon, the Senate represents the Session or Elders and the Pastor, the President or Executive with the church courts or Presbytery the Judicial branch.

Dr. E.W. Smith said it well; "If the average American citizen were asked, who the true author of our great Republic, he might be puzzled to answer. We can imagine his amazement at hearing the answer given to this question by the famous German historian Ranke, one of the profoundest scholars of modern times. Says Ranke, *'John Calvin*

was the virtual founder of America.'

The Roman Catholic scholar Emilio Castelar, Professor of Philosophy at the University of Madrid and later President of the Republic of Spain in 1873, acknowledged:

"It was necessary for the republican movement that there should come a morally more austere than Luther's, the morality of Calvin, and a church more democratic than the German, the Church of Geneva. The Anglo-Saxon democracy has for its lineage a book of a primitive society-the Bible. It is the product of a severe theology learned by the few Christian fugtives in the gloomy cities of Holland and Switzerland, where the morose shade of Calvin still wanders....And it remains serenely in its grandeur, forming the most dignified, most moral and most enlightening portion of the human race."

IX. THE BANKERS HAVE CONSPIRED TO DEFRAUD THE AMERICAN PEOPLE OF THEIR WEALTH BY THE FEDERAL RESERVE PRIVATE MONOPOLY OF THE UNITED STATES PUBLIC MONETARY SYSTEM

In 1966 prior to becoming Federal Reserve Chairman Alan Greenspan stated that; *"The abandonment of the gold standard made it possible for the welfare statists to use the banking system as a means to an unlimited expansion of credit."*

In 1964 President Johnson prior to signing the Coinage Act of 1965 removing silver coins from coinage stated: *"Silver has become too valuable to be used as money."* This paved the way for

unlimited debt to be placed on the backs of the American people via his Great Society programs, which passed Congress in 1965.

In the Ten Planks of the Communist Manifesto Karl Marx states in the 5th plank: *"Centralization of credit in the hands of the state , by means of a national bank with state capital and an exclusive monopoly."* The Federal Reserve has that monopoly on credit creation for use by the central socialist federal government planners.

In natural law, when gold or silver are used as money and the forces of supply and demand are thwarted by government intervention, the amount of new metal added to the money supply will always be closely proportional to the expanding goods and services which can be purchased with it. Long-term stability of prices is the dependable result of these forces. This process is automatic and impartial. Any attempt by politicians to intervene will destroy the benefit for all.

The following is a synopsis of the results of bailing out the Mexican government and U.S. Bankers by the U.S. Treasury via the Federal Reserve following the devaluation of the Mexican Peso after the North American Free Trade agreement went to effect and the negative effect the crisis had on the Magee family. It was during this 1994 and 1995 time frame that Marvin Clyde Magee, Jr. defaulted on his production loans due to the Peso devaluation, which flooded the U.S. market with Mexican tomatoes driving the price down for Magee and other producers, which resulted in USDA seeking foreclosure of his farm

and home. This was done while the bankers were being bailed out by U.S. taxpayers courtesy of the Federal Reserve bankers meeting in secret with the public made aware 5 years after the fact. On March 25, 1999 in *Magee v. Glickman* (2:99-cv-PG44) Judge Charles Pickering a former dairy farmer intervened by signing *"Order Holding Cause In Obeyance"* for the Magee's stopping the foreclosure since he knew how farmers were treated by USDA. The Magee's were offered leaseback/buyback and it was accepted and now after 30 years of labor and production lay in the balance because District Judge Henry Wingate for the Southern District of Mississippi did not stand up for the petitioner and his families civil and property rights by not issuing an injunction stopping the threat of removal from the property by U.S. Marshals. The Magee family had no choice but to move due to the publicity in January of 2006 from the U.S. Senate confirmation of one of this courts present members, who ruled that gestapo tactics were o'k to be used by U.S. Marshals in the removal of a Vermont dairy farm family from their home and farm in *Mellott v. Heemer* 161 F.3d 117 (3rd Cir. 1998) in his 3rd Circuit opinion.

In the Federal Reserve FOMC meeting minutes 7/5-7/6 1995 Chairman Greenspan states: *"Do you mean that we can lower the debt to the public by moving the price of gold up to the market price? That could cut the debt back by a not insignificant amount!"*

Mr. Jordan responds: *"I have been trying not to mention that publicly for fear that someone might want to do it."*

Mr. Greenspan: *"It's probably too late; we just mentioned it.*
Mr. Jordan: *"It will become known five years from now!"*
Mr. Lindsey: *"Five years from now, it will be read in the transcript for this meeting."*

Chase Bank and other banks played a major role in and profited greatly from the collapse of the Mexican economy in the 1990's while receiving taxpayer funds via the monetization by the U.S. Treasury of the Federal Reserve's created money on a balance sheet out of thin air. Where are the checks and balances envisioned by the founders?

Is this what our founders had in mind when they met in Philadelphia in 1787 to guard the people from the central government? I don't think so. I hope and pray that this court would honor the founders by reviewing this case brought by the petitioner to regain the protection of his and the American peoples freedom, liberty, and property rights from a tyrannical oppressive government in collusion with modern day Wall Street pirates.

This money creation which is put into the system when banks extend loans, eventually becomes a source of funding when our government bonds are sold to the public. Here is how Wright Patman former House Banking and Currency Committee Chairman for 16 years summarized the process:

"I have never yet had anyone who could, through the use of logic and reason, justify the Federal Government borrowing the use of its own money....I believe the time will come in this country when people will demand that this be

changed. I believe the time will come in this country when they will actually blame you and me and everyone else connected with the Congress for sitting idly by and permitting such an idiotic system to continue."

On May 23, 1923 Congressman Louis T. McFadden another former Chairman of the House Banking and Currency Committee brought formal charges against the Federal Reserve for numerous criminal acts including conspiracy, fraud, unlawful conversion, and treason in a petition for impeachment of its officials. In 1934 McFadden made a speech on the House floor condemning the Federal Reserve, here are excerpts of that speech:

"Mr. Chairman, We have in this country one of the most corrupt institutions the world has ever known...The Fed has cheated the Government of these United States and the people of the United States out of enough money to pay the nations debt...They are private monopolies which prey upon the people of these United States for the benefit of themselves and their foreign customers; foreign and domestic speculators and swindlers, and rich and predatory money lender. In that dark crew of financial pirates there are those who would cut a man's throat to get a dollar out of his pocket; there are those who send money into states to buy votes to control our legislatures' there are those who maintain International propaganda for the purpose of deceiving us into new concessions which will permit them to cover up their past misdeeds and set in motion their gigantic train of crime."

"These twelve private credit monopolies were deceitfully and disloyally foisted upon this Country by the bankers who came here from Europe and repaid us our hospitality by under mining our American institutions."

After this speech Cong. McFadden suffered two attacks on his life. The first when he was exiting a cab at Washington hotel two shots were fired at him, which lodged in the cab and another time when he became violently ill at a political benefit in Washington. He was saved by a physician friend at the banquet, who procured a stomach pump using it to remove the poison from him. He survived to live only a while longer until October 3, 1936 dying from heart failure sudden-death after a dose of intestinal flu.

President Andrew Jackson stated in reference to the bankers: *"You are a den of vipers and thieves. I intend to rout you out, and by the Eternal God, I will rout you out."* And he did by the grace of GOD while being shot at on the capitol steps and almost impeached by Congress for taking on the bankers.

The petitioner and the American people are hanging in the balance waiting for the scales of justice to prevail preventing the foxes (bankers) from guarding the henhouse (people). This court must once again reassert its role as the gatekeepers of the people's rights as defined by the letter and law of the U.S. Constitution. Resolution of this case is critical to maintain the integrity of the U.S. Constitution and should not wait because of the harm being done to the people by the Federal

Reserve's behind closed doors actions, which have resulted in the American people's hard earned wealth being confiscated by an unconstitutional paper Ponzi Scheme. To GOD alone be the Glory.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

MARVIN CLYDE MAGEE, JR. Pro Se
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DECEMBER 2009

APPENDICES

APPENDIX A

FILED
July 20, 2009
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 09-60009
Summary Calendar

MARVIN CLYDE MAGEE, JR.,
Plaintiff - Appellant
v.

UNITED STATES OF AMERICA,
acting through the Farm Service Agency,
Defendant-Appellee

Appeal from the United States District Court for the Southern District of Mississippi

USDC No. 3:06-CV-541

Before JOLLY, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

I.

In September 1999, Marvin Clyde Magee conveyed his 670-acre farm, located in Smith County, Mississippi, to the Farm Service Agency

("FSA") insatisfaction of a $686,349 debt. In 2000, Mr. Magee entered into a five-year agreement to lease back the property from the FSA. Under the lease agreement, he had the option to purchase the property at the price that, in accord with FSA regulations, would be determined by an independent appraisal.

In 2004, Mr. Magee expressed his intention to exercise the purchase option, and a Mississippi State Certified Appraiser appraised the property at $899,000. The FSA's Review Appraiser confirmed the appraisal after determining that it satisfied the Uniform Standards of Professional Appraisal Practice ("USPAP"). *See* 7 C.F.R. § 761.7 (requiring that agency appraisals comply with the standards contained in the USPAP).

Contending that the appraisal was inflated, Mr. Magee took an administrative appeal to the National Appeals Division ("NAD") of the United States Department of Agriculture. A hearing was then held in which he argued that the comparable sales relied upon by the appraiser were not the best available. He also argued that the timber on the property was valued too high and that some of the appraiser's calculations were incorrect. The Hearing Officer affirmed the appraisal. Mr. Magee then exercised his right to a review by the Director of the NAD. *See* 7 C.F.R. § 11.9. The Director affirmed the Hearing Officer's determination.

Mr. Magee then filed an action in federal court seeking review of the appraisal, but shortly thereafter he requested that it be dismissed without prejudice. He filed a second action, the one

underlying this appeal, in Mississippi state court. In the caption of his complaint, he listed George W. Bush and the United States Government as defendants. The complaint implicated all branches of the federal government and several previous presidential administrations. All, he asserted, had conspired to defraud him of his God-given right to life, liberty, and the pursuit of happiness. The executive branch, he claimed, had failed to keep food prices stable and neglected its duty to keep farmers, like himself, financially strong. The United States Congress, he argued, aided this fraud by subsidizing mega-farms. Finally, he asserted that the federal judiciary, unduly influenced by the University of Chicago Law School, had been willing accomplices in this injustice. For these wrongs, he sought $2,376,292 in damages and an injunction preventing the sale of the farm.

The FSA removed the action to the United States District Court for the Southern District of Mississippi. The FSA then filed a motion seeking dismissal or, in the alternative, summary judgment. The court granted the FSA's motion for summary judgment. Mr. Magee now appeals.

II.

The first of his two claims sought review of the agency's appraisal. When federal courts review an FSA determination, we are required to apply a standard that gives great deference to that agency's ruling; we can set aside an FSA determination only if it acted in an arbitrary or capricious manner, or

not in accord with the law. *Kinder Canal Co. v. Johanns*, 493 F.3d 543, 547 (5th Cir. 2007) (citing the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*).

Mr. Magee bore the burden of proving that the $899,000 appraisal was erroneous, *see* 7 C.F.R. § 11.8(e), yet he has offered nothing that indicates that the appraisal must be disregarded. We, like the district court, must conclude therefore that he has failed to show the courts that the FSA's decision was arbitrary or capricious.

The second claim is based upon various policies of the federal government, which he asserts depressed his farm income. Had it not been for these policies, he argues, he would have earned over two million dollars more than he actually did. Here is a list of some of the policies and events that he blames for his revenue shortfall: (1) a grain embargo placed by the United States in 1980; (2) the entrance of millions of illegal aliens into the United States; (3) the North American Free Trade Agreement; (4) the failure of the United States government to adequately enforce antitrust statutes; and (5) the failure of the Secretary of Agriculture to maintain market conditions favorable to farmers.

Mr. Magee's claim for damages, based on policies of the government that only have broad general applicability, has no merit. We therefore affirm the district court's grant of summary judgment.

III.

For the above reasons, the judgment of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 09-60009

MARVIN CLYDE MAGEE, JR.
Plaintiff-Appellant

v.

UNITED STATES OF AMERICA
acting through the Farm Service Agency,
Defendant-Appellee

Appeal from the United States District Court for the Southern District of Mississippi, Jackson

ON PETITION FOR REHEARING AND
REHEARING EN BANC

(Opinion__----,_, 5 Cir.,, F.3d)

Before JOLLY, BENAVIDES, and CLEMENT,
Circuit Judges.

PER CURIUM: Filed September 21, 2009

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the court having requested that the court be-polled on Rehearing En Banc, (FED,R,APP.P. and 5TH Cir. R. 35) the Petition for Rehearing En Banc is also DENIED. () The Petition for Rehearing

is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing EN BANC is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT

E. GRADY JOLLY

United States Circuit Judge

Order on pet for reh and re EB-REHG4A

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

MARVIN CLYDE MAGEE, JR. PLAINTIFF

v CIVIL ACTION NO. 3:06-541 HTW-LRA

UNITED STATES OF AMERICA,
Acting through the Department of Agriculture, Farm Service Agency, et al. DEFENDANTS

MEMORADUM OPINION AND ORDER

Before the court is the motion of the United States of America (United States) asking the court to dismiss the above-styled and numbered cause to the dictates of Rule 12(b)(6)[i], Federal Rules of Civil Procedure, or to grant to defendant summary judgement under the aegis of Rule 56 (b) & (c)[ii], Federal Rules of Civil Procedure, [Docket No. 21]. Plaintiff here is Marvin Clyde Magee, Jr., who challenges a decision by the Farm Service Agency ('FSA) of the United States Department of Agriculture under the Administrative Procedure Act, Title 5 U.S.C. §§701, et seq.[iii] This dispute involves a 670 acre farm and homestead located in Smith County, Mississippi.[iv] By this lawsuit, plaintiff Magee seeks: (1) to enjoin the defendant United States from selling or disposing of any part

of the farm and homestead; (2) to require the United States to restore in his nam title to the farm and homestead; and (3), to compel the United States to award him compensatory damages in the amount of $2,376,292.00.

The defendant here objects, the United States objects to any finding of liability against it and has responded with its motion to dismiss or for summary judgement. Plaintiff also has submitted a motion for summary judgement, his being under Rule 56(a)[v] Federal Rules of Civil Procedure, [Docket No. 25] wherein he contends that he, not the United States, is entitled to judgment as a matter of law. For the reasons which follow, this court is persuaded to grant the defendant's motion for summary judgement and to deny that of the plaintiff's.

FACTUAL BACKGROUND

On September 2, 1999, plaintiff and his wife conveyed to FSA 670 acres of land located in Smith County, Mississippi. This conveyance was prompted by the Magees' decision to settle their indebtedness to FSA of $686,349.87.

On May 4, 2000, the plaintiff Magee and his wife entered into a lease agreement with the FSA pertaining to that same 670 acre farm and homestead the Magees previously had conveyed to FSA in settlement of their defaulted loans.[vi] The lease was for five years with an option to purchase and an expiration date of May 4, 2005.

On August 2, 2004, the Magees expressed an

intention to exercise their option to purchase the property from FSA. So, on September 21, 2004, Bill J. Morris, the FSA's appraiser, and a Mississippi State certified General Real Estate Appraiser then completed a real estate appraisal of the property and determined the market value of the property to be $899,000.00. Merchantable timber was valued at $41,412.55.

On November 23, 2004 Charles Cole, Jr., the FSA's Review Appraiser, completed a technical review of Bill Morris' appraisal and found itr to be in accordance with the requirements of 7 C.F.R. §761.7[vii] (previously 7 C.F.R. Part 1922) and the Uniform Standards of Professional Appraisal Practice (USPAP). Cole, too, is a Certified Real Estate Appraiser.

On January 19, 2005, Clyde Magee met with the FSA to discuss reconsideration of the November 23, 2004, review appraisal had overvalued the property. The FSA informed Magee and his wife that they failed to provide any information that could refute the value or the accuracy of the appraisal or affect the amount of the purchase price. The Magees, then, were informed of their appeal rights.

The Magees took an administrative appeal of the FSA determination to the National Appeals Division ("NAD") of the United States Department of Agriculture. Nevertheless, NAD rejected the appeal. The Hearing Officer was unimpressed with the Magee' argument that the comparable sales relied upon by FSA were not the best available for the appraisal, that the timber was valued too high,

and that some of the calculations with regard to buildings were in error. The Hearing Officer further concluded that the FSA had not erred when it offered to sell the 670 acres back to the Magees for $899,000.00.

After the decision was issued, Magee requested a review of the Hearing Officer's decision by the Director of NAD pursuant to 7 C.F.R. §11.9.[viii] On October 20, 2005, the Director issued a determination affirming the decision of the Hearing Officer and the FSA.

Aggrieved with the NAD's appeal determination, Clyde Magee first filed in Federal Court a lawsuit addressing this matter, but then voluntarily dismissed it. On September 13, 2006, Magee filed a second lawsuit, this time in the Circuit Court of Smith County, Mississippi, asserting his dissatisfaction with the FSA ruling, the outcome of the NAD appeal, and seeking injunctive relief.

The United States removed the case to the United States District Court for the Southern District of Mississippi on September 29, 2006. Magee sought to remand the case to state court under the authority of Title 28 U.S.C. § 1447[ix]. This court denied the motion to remand on September 10, 2007, finding that this action seeks judicial review of a final agency decision by the FSA, and the affirmation of that decision by the FSA, and the affirmation of that decision by the NAD. Consequently, this court concluded that this case falls under the Administrative Procedure Act, Title 5 U.S.C. §§701, et seq. See also, Title 7 U.S.C. § 6999 [x] and 7 C.F.R. § 11.13 (same). Thus, this is

persuaded that this lawsuit is properly in this federal forum for the purpose of reviewing an administrative agency's decision. [xi]

The United States now submits that no genuine issue of material fact exists and that the United States is entitled to judgement as a matter of law. This court, faced with a Rule 12(b)(6), as well as a Rule 56 motion, chooses to analyze the facts of this controversy under the summary judgement[xii] standard of Rule 56, rather than dismissal under Rule 12.

MAGEES' ARGUMENTS

Marvin Clyde Magee, Jr. is the sole plaintiff in the case. His complaint asserts that once the United States government approved the North American Trade Agreement (NAFTA), Mexico was able to flood the United States market with tomatoes, driving down prices, and causing Magee, a produce farmer, the financial harm which led to his inability to pay his loans.

Magee next derides the "Chicago School[xiii]" of economics which he believes to be overly influential upon the judicial branch of government. Magee complains that the United States favors corporate interest over the rights of the common man. He also argues that the appraisal in question has enabled the government to confiscate his property.

Magee says his claim for damages against the United States is based on the failure of the United States Congress to maintain the value of the dollar, permitting it to become too soft against other

currencies and ruining Magee's ability to obtain goods and services, all in violation of Article I, Section 8 of the Constitution of the United States.[xiv]

According to Magee, his gross farm sales between 1980 and 2004 were $4,374,712.00, but would have been $7,200,000.00 if the value of the United States currency had remained stable. The difference between these two figures is $2,376,292.00, the amount of damages now sought by Magee. The failure of the FSA to respond to this claim for damages prior to his filing of this lawsuit, says Magee, constitutes tacit agreement by the FSA that this amount is the true measure of his damges.

Finally, seeking to attack the amount of the FSA appraisal, Magee contends that a comparable sale of property in the area shows the inaccuracy of the FSA appraisal. Magee refers to a March 4, 2005 sale of 53 acres located within ten miles of the farm and homestead in question that was sold for only $25,385.00.

THE UNITED STATES RESPONDS

The United States responds that Magee's' allegations utterly fail to contradict the FSA's contract appraisal. Magee's assertions pertaining to NAFTA, the alleged influence of the Chicago School of economic thought and devaluation of the United States dollar are irrelevant on the issue of appraisal. Further, says the United States Magee's reliance on an alleged comparable sale of property on March 4, 2005, within ten miles of the farm and homestead is misplaced.

JUDICIAL REVIEW STANDARD

Judicial review by this court of a National Appeals Division determination is defined by the following principles: (1), it is limited to the agency record. *See Camp v. Pitts,* 411 U.S. 138, 142, 93. S.Ct. 1241, 36 L.Ed.2d 106 (1976); and *Texas-Capital Contractors v. Abdnor,* 933 F.2d 261, 264 (5th) Cir. 1990): (2) agencies are given deference by courts when agencies' administered regulations and statutes are interpreted. l*d.*, at 264; and (3), review of their actions is limited to final agency actions. Title 5 U.S.C. § 704.

The courts review final agency decisions to determine whether the agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Title 5 U.S.C. § 706(2)(A); *Camp,* 411 U.S. at 142. Under the scope of review outlined at Title 5 U.S.C. § 706(2)(D), the reviewing court shall also determine if the agency action, findings, and conclusions failed to observe procedure required by law. A decision is arbitrary or capricious when it is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Wilson v. U.S. Department of Agriculture,* 991 F.2d 1112, 1215 (5th) Cir. 1993). The decision must have a rational basis. *Id.,* at 1215. A court is not to substitute its judgement for that of the agency. *Motor Vehicle Manufactures Association v. State Farm Mutual Auto. Ins.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983). The grounds upon which an administrative order

must be judged are those on which the record discloses that the agency's actions were based. *SEC v. Chenery,* 318 U.S. 80, 87, 63, S.Ct. 454, 87 L.Ed. 626 (1943). The burden of proof rests with the party challenging the agency action and that party must show that the agency action was arbitrary and capricious. *Ward v. Campbell,* 610 F.2d 231, 235 (5th Cir. 1980).

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted if, "[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment is mandated in any case where a party fails to establish the existence of an element essential to the case on which that party has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91L.Ed.2d 265 (1986). The court will resolve all reasonable doubts about the existence of a genuine issue of material fact against the moving party. *Byrd v.Roadway Express, Inc.*, 687 F.2d 85, 87 (5th Cir.1982). When, as here, the moving party has carried the Rule 56© burden, the opposing party must present more than a metaphysical doubt about the material facts in order to preclude the grant of summary judgment. *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, 475 U.S.

574, 106 S.Ct.1348, 89 L.Ed.2d 538 (1986)

ANALYSIS

This court has considered Magee's argument that a 53 acre tract of land located within ten miles of the farm and homestead in question was sold on March 4, 2005, for only $25,385.00. This property, says Magee, has a Wetland Conservation Easement covering three of the total 53 acres. So, says Magee, this property constitutes a comparable sale which should have been included in the FSA appraisal.

The NAD Hearing Officer rejected this argument, noting that the 53 acre tract submitted by Magee as a comparable sale was not sold until March 4, 2005. The FSA contract being reviewed involved an appraisal dated September 21, 2004. Thus, this sale could not have been considered when the appraisal in question was conducted.

Additionally, the NAD Hearing Officer found that the FSA had not placed a conservation easement of any sort on the Magee's 670-acre property, so, the Wetland Conservation Easement covering three acres of the 53-acre tract did not make this tract comparable to the farm and homestead in question. The placement of such an easement removes part of the farmland from inclusion in the property's overall value. Thus, if such an easement had been imposed by the FSA, then the appraised value of the 670 acres might have been some amount less than the determined amount of $899,000.00.

This court finds, then, that Magee's complaint offers nothing to contradict the FSA's contract

appraisal of the farmland and homestead in question. This court agrees with the United States' argument that Magee's reference to NAFTA, the Chicago School of thought and the devaluation of the dollar are all irrelevant to the issue before the court on the matter of FSA's appraisal of the 670 acres in question. Therefore, Magee has failed to show that the agency action was arbitrary and capricious and has failed to shoulder his burden of proof. This court has reviewed the entire administrative record and finds nothing to indicate that the FSA did not observe the procedure required bylaw.

Next, the United States submits that Magee's claim for damages and/or offset inthe amount of $2,376,292.00 has never been submitted to the FSA for administrative exhaustion under the Federal Tort Claims Act (FTCA), Title 28 U.S.C. § 2675[xv]. Such exhaustion is a jurisdictional prerequisite to filing a claim for monetary damages against the United States and cannot be waived. *Price v. United States,* 81 F.3d 520, 521 (5thCir.), *cert. denied*, 519 U.S. 927, 117 S. Ct. 295, 136 L.Ed.2d 214 (1996). Magee has the burden to show this court that he filed an administrative claim within two years of its accrual and then filed suit within six months of its denial." *Ramming v. United States*, 281 F.3d 158, 162 (5th Cir. 2001). Moreover, this court has no authority to expand its jurisdiction, even for equitable purposes, beyond the limits established by Congress. *Ramming,* 281 F.3d at 165. This ground alone supports this court's dismissal of this Magee claim. Even so, this court is

afforded a second reason.

The FTCA is a limited waiver of sovereign immunity for the negligent acts or omissions of government employees. *Armendiaz-Mata v. U.S. Dept. of Justice, DEA*, 82F.3d 679 (5th Cir.1996); *Wilkerson v. United States*, 67 F.3d 112, 118 (5th Cir. 1995).The instant dispute over the appraised value of property is not a matter contemplated12by the FTCA since the statute requires assertion and proof of a negligent act. *Dalehitev. United States*, 346 U.S. 15, 45, 73 S.Ct. 956, 972, 97 L.Ed. 1427 (1953) (the FTCA waives only the government's immunity from actions for injuries to person and property occasioned by the tortious conduct of its agents acting within their scope of business).Since Magee's complaint does not assert a negligence claim, Magee is foreclosed from seeking relief under the FTCA.

CONCLUSION

Therefore, based on the foregoing authority and analysis, this court finds the motion of the United States of America acting through the Farm Service Agency for summary judgment **[Docket No. 21]** to be well taken and the same is granted. The motion of Marvin Clyde Magee, Jr. for summary judgment **[Docket No. 25]** is denied.

SO ORDERED this the 18th day of July, 2008.

s/ HENRY T.WINGATE

CHIEF UNITED STATES DISTRICT JUDGE

CIVIL ACTION NO. 3:06-541 HTW-LRAMemorandum Opinion and Order

i Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that, "[e]very defense , in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim,, cross-claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (6) failure to state a claim upon which relief can be granted, ..."

ii Rule 56(b) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[a] party against whom a claim . . . is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Rule 56(c) of the Federal Rules of Civil Procedure provides, in pertinent part, the following: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

iii Title 5 U.S.C. § 702 provides in part that, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." Title 7 U.S.C. § 6999 provides that, "[a] final determination of the Division shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of Title 5."

iv. The dispute involves three lawsuits relating to the farm land in question. *See Marvin C. Magee, Jr. vs. Dan Glick man*, Civil Action No.2:99-cv-44- PG, (S.D. Miss. 1999); *Marvin Clyde Magee, Jr. vs. United States Government*, Civil Action No. 3:06-cv-77-HTW-JCS, (S.D. Miss. 2006), which was voluntarily dismissed by the plaintiff; and the present lawsuit. A Final Judgment was entered in Civil Action No. 2:99-cv-44-PG, dismissing the case without prejudice so that the plaintiff could pursue an administrative request to the Farm Service Agency for leaseback/buyback pursuant to 7 C. F.R. §1951.911(a)(7)(1999).

v. Federal Rule of Civil Procedure 56(a) provides that, "[a] party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof."

vi. According to a summary prepared for the Mississippi Debt Settlement Review Committee for the federal Farm Service Agency on January 25, 2000, Magee's total indebtedness on this property was $686,349.87.

vii. 7 C.F.R § 761.7 provides in pertinent part that, "[r]eal estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. A current copy of USPAP along with other applicable procedures and regulations are available for review in each Agency State Office."

viii. 7 C.F.R. 11.9 provides in part that, "[n]ot later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under § 11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong."

ix. Title 28 U.S.C. § 1447 provides in pertinent part: (c) A motion to remand the case on the basis of any defect other than subject matter jurisdiction must be made within 30 days after the filing of the notice or removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and nay actual expenses including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon

proceed with such case.

x. Title 7 U.S.C. § 6999 provides that, "[a] final determination of the Division shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of Title 5."

xi. A person adversely affected by a decision made by an agency within the United States Department of Agriculture ("FSA") may appeal to the NAD. Title 7 U.S.C. § 6996. An evidentiary hearing is held before a Hearing Officer of the NAD. Title 7 U.S.C. §§ 6996 and 6997. The decision of the NAD Hearing Officer may be appealed to the NAD Director. Title 7 U.S.C. § 6998. Any final determination by the NAD Director is appealable to a U.S. District Court. Title 5 U.S.C. §§ 701 et seq. Jurisdiction for review of a final NAD determination is vested exclusively in the district courts. Title 7 U.S.C. § 6999.

xii. Rule 12(d) of the Federal Rules of Civil Procedure provides in pertinent part that, "[i]f, on a motion under 12(b)(6) or 12(c), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 ." *Jackson v. Procunier*, 789 F.2d 307, 310 (5th Cir. 1986).

xiii. Magee refers to the economic theories expounded by Frank H. Knight who presided over the Department of Economics at the University of Chicago and taught such influential economists as Milton Friedman.

xiv. Article I, Section 8 or the Constitution of the United States provides in relevant part that, "[t]he Congress shall have Power to ... coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; ... "

xv. Title 28 U.S.C. § 2675(a) provides in relevant part that, "[a]n action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented

the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail."

APPENDIX D

ARTICLE I SECTION 8

Article I, Section 8 of the Constitution of the United States provides in relevant part that, "[t]he Congress shall have Power to ... coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; ... "

FIFTH AMENDENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

7 U.S.C. 601. Declaration of Conditions

It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural

commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

7 U.S.C. 602. Declaration of Policy

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 1301 (a)(1) of this title.
this subchapter and the declaration of policy—

(A) The "parity price" for any agricultural commodity, as of any date, shall be determined by multiplying the adjusted base price of such commodity as of such date by the parity index as of such date. (ii) the ratio of the general level of prices received by farmers for agricultural commodities during such period to the general level of prices received by farmers for agricultural commodities during the period January 1910 to December 1914, inclusive. As used in this subparagraph, the term "prices" shall include wartime subsidy payments made to producers under programs designed to maintain maximum prices established under the Emergency Price Control Act of 1942.

(C) The "parity index", as of any date, shall be the ratio of (i) the general level of prices for articles and services that farmers buy, wages paid hired farm labor, interest on farm indebtedness secured by

farm real estate, and taxes on farm real estate, for the calendar month ending last before such date to (ii) the general level of such prices, wages, rates, and taxes during the period January 1910 to December 1914, inclusive.

(D) The prices and indices provided for herein, and the data used in computing them, shall be determined by the Secretary, whose determination shall be final.

(E) Notwithstanding the provisions of subparagraph (A) of this paragraph, the transitional parity price for any agricultural commodity, computed as provided in this subparagraph, shall be used as the parity price for such commodity until such date after January 1, 1950, as such transitional parity price may be lower than the parity price, computed as provided in subparagraph (A) of this paragraph, for such commodity. The transitional parity price for any agricultural commodity as of any date shall be—(i) its parity price determined in the manner used prior to the effective date of the Agricultural Act of 1948, less (ii) 5 per centum of the parity price so determined multiplied by the number of full calendar years (not counting 1956 in the case of basic agricultural commodities) which, as of such date, have elapsed after January 1, 1949, in the case of non-basic agricultural commodities, and after January 1, 1955, in the case of the basic agricultural commodities.

(F) Notwithstanding the provisions of subparagraphs (A) and (E) of this paragraph, if the parity price for any agricultural commodity,

computed as provided in subparagraphs (A) and (E) of this paragraph, appears to be seriously out of line with the parity prices of other agricultural commodities, the Secretary may, and upon the request of a substantial number of interested producers shall, hold public hearings to determine the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities. Within sixty days after commencing such hearing the Secretary shall complete such hearing, proclaim his findings as to whether the facts require a revision of the method of computing the parity price of such commodity, and put into effect any revision so found to be required.

(G) Notwithstanding the foregoing provisions of this section, the parity price for any basic agricultural commodity, as of any date during the six-year period beginning January 1, 1950, shall not be less than its parity price computed in the manner used prior to October 31, 1949.

(2) "Parity", as applied to income, shall be that gross income from agriculture which will provide the farm operator and his family with a standard of living equivalent to those afforded persons dependent upon other gainful occupation. "Parity" as applied to income from any agricultural commodity for any year, shall be that gross income which bears the same relationship to parity income from agriculture for such year as the average gross income from such commodity for the preceding ten calendar years bears to the average gross income from agriculture for such ten calendar years.